UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HERMÈS INTERNATIONAL and HERMÈS OF PARIS, INC., Plaintiffs, v. MASON ROTHSCHILD, Defendant.	No. 22-cv-00384-JSR ECF Case **DECLARATION OFJAMES KERR**

I, James Kerr, hereby declare as follows:

1.   I am a Portfolio Lead at Consilio. I submit this declaration in support of Mr. Rothschild's opposition to Plaintiffs' Motion for Summary Judgment. I have firsthand knowledge of the matters stated herein.

2.   Consilio is a global provider of eDiscovery, data management, and managed review services for law firms and corporations.

3.   Consilio was retained by Lex Lumina PLLC, counsel for Defendant Mason Rothschild, to provide discovery services in this case. Part of our services have included collecting, searching, and preparing for production Mr. Rothschild's electronically stored information (ESI) from numerous sources. I am a member of the Consilio team assigned to this case.

4.   On June 8, 2022, we collected, among other things, all of the data from Mr. Rothschild's Discord account, including all of the direct messages contained in that account. We then searched that data—and other ESI collected from Mr. Rothschild such as his text messages,

emails, and various social media accounts—using the same search terms (*e.g.*, birkin, metabirkin, and others) that we used to search all of Mr. Rothschild's ESI.

5.   As of today, this case is only the third project out of thousands of projects in Consilio's history in which Discord data has been collected and reviewed. We used industry standard tools available at this time to collect, search, and prepare for production Mr. Rothschild's Discord data. Due to the nature of the Discord software, however, and because it is not a chat client that turns up often in e-discovery (because in our experience it is a less formal application mainly used for gaming by gamers), Consilio does not have tools to parse the individual Discord messages and lump them together into chat conversations in the way that we do with phone text messages or more corporate-oriented messaging systems like Slack or Microsoft Teams.

6.   For this reason, unlike our search of Mr. Rothschild's phone text messages, our search of Mr. Rothschild's Discord direct messages returned only the single, responsive lines of text contained in the messages—for example, the lines ""if i use birkin alone" and "but metabirkin" were produced on July 30, 2022, to Plaintiffs as text files without any of the surrounding messages or other context, with placeholder pages labeled Rothschild008010 and Rothschild007488, respectively. I have attached hereto as Exhibit 1 an Excel export of those messages with accompanying metadata.

7.   These messages produced as Rothschild008010 and Rothschild007488 were extracted from Mr. Rothschild's Discord direct messages shown in the screenshot attached hereto as Exhibit 2.

8.   The messages were not close together in the production due, again, to the nature of the Discord software and the limitations of our collection tools for it. When we put collected

data into our database, a hash value called the "group identifier" is applied; normally its function

is to keep family documents together, so as to ensure that we are producing parent documents

first and their children afterward. In this case, though, the relationship between these two

messages was not a "family" relationship (*i.e.*, neither were attachments to the other). For more

conventional e-mail or other threaded data, another data field—the "Family Datetime" field—

would already have taken care of the sorting. The Discord messages, however, present an

unusual situation where we have documents that were related, but not in the "normal" way in

which we would worry about keeping related documents together, and the process that was

intended to keep the families sorted properly ended up sorting these two documents relatively far

apart.

9.   I also have attached hereto as Exhibit 3 a screenshot from Mr. Rothschild's

Discord direct messages from December 2, 2021, which we located with an additional, manual

search on October 17, 2022, as these messages were not captured by our initial search of Mr.

Rothschild's Discord account data.

10.   Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing

is accurate to the best of my knowledge.

Dated: October 19, 2022

James Kerr
_____
James Kerr